HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 447 of 2001
(Old No. 1693 of 1984)

Umanand	.....	Appellant
	Versus	
State	.....	Respondent.

With

Criminal Appeal No. 448 of 2001
(Old No. 1692 of 1984)

Chiranji Lal	.....	Appellant
	Versus	
State	.....	Respondent.

Approved for reporting.

~~Not approved for reporting.~~

Date of Decision 14th December, 2004.

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Reserved

CRIMINAL APPEAL NO.447 OF 2001 (NEW)
1693 OF 1984 (OLD)

Umanand S/o Sri Bachi Ram
R/o Village Jamari
Patti Bichala Badalpur
District Pauri Garhwal **.....** **Appellant**

Versus

State of Uttaranchal ..... **Opposite Party**

With

CRIMINAL APPEAL NO. 448 OF 2001 (NEW)
1692 of 1984 (OLD)

Chiranji Lal S/o Sri Bachi Ram
R/o Village Jamari
Patti Bichala Badalpur
District Pauri Garhwal **.....** **Appellant**

Versus

State of Uttaranchal ..... **Opposite Party**

Sri K.S. Bora learned counsel for the appellants
Sri Amit Bhatt learned A.G.A. for the State.

Coram: Hon. M.M. Ghildiyal, J.
Hon. B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

1. Both the aforesaid appeals arises against the judgment and order dated 10.05.1984 passed by Session Judge, Pauri Garhwal in ST No. 4 of 1983 State vs. Umanand and others convicting the appellants u/s 302 and sentencing thereon for life imprisonment.

2. Brief facts which give rise to the present appeals are that on 16.10.1982 about 5:00 P.M. at Dhaj Nam Tok in village Jamari, Basanti Lal and Govind Ram sons of Bachhi Ram were doing some work on their fields. Appellants Chiranji Lal and Umanand were also working on their fields. Both the parties, i.e. the accused and the deceased have old

enmities. Appellants Chiranji Lal and Umanand are sons of Bachhi Ram while the deceased were also sons of Bachhi Ram. Bachhi Ram had three wives namely, Smt. Jhunga Devi, Smt. Dikka Devi and Smt. Vishni Devi. Appellants Umanand and Chiranji Lal were sons from Smt. Dikka Devi. All the three wives of Bachhi Ram reside separately and they have their separate cultivation.

3. Prior to this occurrence, there was some quarrel between Umanand and deceased Basanti Lal which ended into an agreement.

4. On the date of occurrence, i.e. 16.10.1982 at about 5:00 P.M. Km. Pitambari daughter of one of the appellants was grazing goats. The goats entered in the field of Govind Ram. Govind Ram retarded on this and the goats thereafter started grazing the fields of another deceased Basanti Lal. When Basanti Lal went on his field in order to get out the goats, the accused/appellant Umanand caught hold of him and assaulted at his head with stones. When Govind Ram intervened then the appellant Umanand assaulted at Govind Ram with Nisura, (an appliance used for ploughing the fields). Raising an alarm by Smt. Maheshwari Devi, wife of Jagdish Prasad, another brother of deceased Basanti Lal, Govind Ram and other family members came at the spot but they found that both the injured persons were dead.

5. The information with regard to this occurrence was communicated to one Narayan Singh by wife of Govind Ram who prepared the written report Ex. Ka. 1 and this report was delivered by Rajender Prasad and Mahashwari Devi soon to the Patwari on 17.10.1982 and on the basis of this report, chick F.I.R. was prepared and the case was registered against the accused persons. The investigating officer, i.e. Patwari inspected the place of occurrence on 17.10.82 and found the dead body at the spot. He took the samples of blood stains from the place of the occurrence as well as blood stained pieces of stones. The investigating officer also recovered one Nisura from the cowshed of the accused/appellant Umanand at the place of occurrence and prepared the memo in this regard. The

investigating officer also prepared inquest in respect of the dead bodies and thereafter sent the bodies for post mortem examination.

6. The investigating officer after the arrest of the appellant Chiranji Lal recovered his Paijama and shirt at his pointing out from a potli kept in the kitchen of the accused/appellant Umanand and prepared a memo accordingly. The investigating officer also prepared site plan and recorded the statement of the witnesses. Thereafter, the investigation was taken by Mohan Lal Kanoongo under the order of SDM Lansdown who went to spot and verified the site plan prepared by former I.O and recorded the formal witnesses.

7. Dr. V.K. Saxena P.W. 3 conducted the post mortem on the body of the deceased Govind Ram on 20.10.1982 at 10:30 A.M. and found following ante mortem injuries:

1. *Lacerated wound right side of scalp 10 cms, above right pinna measuring 5 cms. X 2.5 cms x deep on cutting under neath haematoma present.*
2. *Multiple lacerated wounds from right side scalp just below injury no. 1 and above right pinna in an area of 10 cms x 6 cms x bone deep under neath. Haematoma present.*
3. *Lacerated wounds left side of scalp 9 cms. Above left pinna measuring 2.5 cms x 2 cms. x bone deep under neath. Haematoma present.*
4. *Communicated fracture involving right side of temporal, parietal frountal bones, haematoma around fracture area present. Brain matter coming out from fractured area.*

8. The Doctor on internal examination found memberances of brain congested and brain matter from right side protruding out from fractured area. The Doctor opined that the death of the deceased was caused due to aforesaid injury and also opined that the death was caused about three to 4 days prior to the date of post mortem examination.

9. The Doctor again on 20.10.1982 at 11:45 A.M. conducted the post mortem on the body of Basanti Lal and found following ante mortem injuries:

1. *Multiple lacerated wounds present over right side of scalp 4 cms. above right pinna in an area of 12 cms. and 8 cms. x bone deep on cutting under neath. Haematoma present.*
2. *Communicated fracture over right side, involving frontal temport and parietal bones present. Brain mater coming out of from fractured areas. Haematoma around fractured area present.*

10. On internal examination the Doctor found that brain matter protruding out from fractured area. He opined that the death was caused due to head injuries and also opined that the death was about three to four days prior to the date of post mortem examination. The Doctor further opined that the injuries caused in persons of both the deceased could be by means of pelting of heavy stones.

11. The Investigating Officer after completing the investigation, submitted the chargesheet on 12.12.1982 against the accused/appellants u/s 302 I.P.C.

12. After the submission of chargesheet, the accused were committed to the court of sessions for their trial and the learned Session Judge on 18.03.1983 framed the charges u/s 302 I.P.C. against them.

13. The accused/appellants denied of the charges against them and claimed their trial.

14. Further, it is to mention that in this case certain other persons were held as accused by the prosecution and the chargesheet was filed against them u/s 302 I.P.C. The charges u/s 302 of the I.P.C. read with section 149 of the I.P.C. were framed against the other accused persons, namely, Smt. Rameshwari Devi, Smt. Sitambari Devi and Km. Pitambari by the

court. But the trial court, ultimately, after having perused the evidence on the record, acquitted the other persons for the charges u/s 302 read with 149 I.P.C. vide its judgment and order dated 10.05.1984.

15. The prosecution in order to bring home the guilt of the accused persons produced PW 1 Narayan Singh, PW 2 Rajendra Prasad, PW 3 Dr. V.K. Saxena, PW 4 Smt. Maheshwari Devi, PW 5 Satish Chandra, PW 6 Prem Ballabha, PW 7 constable Ranjeet Lal, PW 8 L.R. Yadav, S.D.M, PW 9 Maharban Singh, PW 10 Kishori Lal, Patwari, PW 11 Yashwant Singh, chaprasi of patwari and PW 12 Mohan Lal Kanoongo, I.O.

16. After evidence of the prosecution was over, the statements of the accused were recorded u/s 302 I.P.C. The accused did not produce any evidence in their support.

17. The learned trial court, after hearing learned counsel for the parties and having perused the entire evidence on record convicted the accused Umanand and Chiranji Lal u/s 302 of IPC and sentenced them for life imprisonment vide judgment and order dated 10.05.1984.

18. Feeling aggrieved by the impugned judgment and order dated 10.05.1984, the convicts preferred the appeals before the Allahabad High Court which have been transferred to this court after creation of new State of Uttaranchal.

19. We have heard the learned counsel for the parties and perused the record.

20. The first important point to be assessed in this case is the First Information Report which is alleged to have been lodged by Narayan Singh at Patwari Patti on 17.10.1982 at 8:00 a.m. The incident is alleged to have been taken place on 16.10.1982 at 5:00 p.m. at village Jamari which is at a distance of about 6 km from the chowki Patwari Patti. Narayan Singh (P.W.1) has deposed that the deceased Basanti Lal and

Govind Ram are step brothers of the accused Umanand and Chiranji Lal begotten by Bachhi Ram by his different wives and all the accused persons residing in the same village Jamari to which the informant belongs. This witness has also stated that the accused/appellants Chiranji Lal and Umanand bear enmity against their step brothers Basanti Lal and Govind Ram in respect of dispute regarding land and prior to this occurrence there had been a dispute between the accused and Basanti Lal which was referred to this witness for adjudication and there was a compromise between the parties. This witness has further deposed that wife of the deceased Govind Ram had informed him regarding the occurrence while he was at his shop. After this, he went to village Jamari and saw the dead body of Basanti Lal and Govind Ram and thereafter he lodged the report Ex. Ka. 1 through Rajender Prasad (P.W.2) and Mahashwari Devi ((P.W.9). Nothing has been elicited in the cross-examination of this witness which may suggest that either this witness is telling lie or has any motive to falsely implicate the accused persons or he caused any undue delay in lodging the First Information Report. Therefore, the First Information Report in this case cannot be said to be delayed.

21. As far as the motive is concerned, we have already discussed above that Narayan Singh (P.W.1) has deposed in his statement before the court that there had been enmity between the parties with regard to the landed property. Further the motive in the criminal case does not play any important role. It is the accused who is the best person to tell as to what factor was playing in his mind at the time of the commission of crime. Once it is a case of direct evidence. Therefore, the motive is not material. However, in the instant case there is a motive that the accused/appellants started quarrel at the time of the occurrence in view of their old litigations.

22. Learned counsel for the defence has argued that it is a case in which the accused/appellant exercised the right of private defence pertaining to their persons. Our attention has been invited towards the certain paragraphs of the deposition of the witnesses and on the basis of these

statement it was suggested that there was a free fight between the accused and the deceased and the accused/appellant Umanand also sustained injuries during the course of occurrence and his injuries were noted when he was taken into custody. Our attention has also been invited towards the medical report of accused/appellant Umanand Ex. Ka. 3 which shows that he was medically examined by Dr. S.P. Naithani on 18.10.1982 at 3:45 p.m. and the doctor observed as far as 13 injuries on his person.

23. The case does not appear to be a case of right of private defence. A perusal of the injury report of the accused/appellant Umanand shows that, of course, he had 13 injuries on his person when he was medically examined by the doctor but the doctor in his opinion has stated that all these injuries were more than 12 hours duration and it does not connect the actual time of occurrence.

24. It is important to mention here that the accused/appellant Umanand surrendered himself on 17.10.1982 at 8:00 p.m. and Ranjeet Lal (P.W.7) constable has stated that the accused/appellant Umanand came to the police station and his cloths were taken into possession. This witness has prepared the G.D. report Ex. Ka. 29 by which the memo with regard to the clothes of the accused/appellant Umanand has been detained. This G.D. entry does not indicate anywhere that there was any injury on the person of the accused/appellant Umanand. Further Ranjeet Singh (P.W.7) has also prepared the G.D. No. 30 in which he has mentioned that there were 8 injuries on the person of the injured appellant – Umanand.

25. In case, if it is presume that the injuries were caused on the person of the accused during the course of the occurrence even then in view of the manner in which the incident had taken place as has been alleged by the prosecution, the accused/appellants did not have any apprehension of their lives, therefore, there was no occasion for the accused/appellants to have killed the deceased – Basanti Lal and Govind Lal by taking the pretext that they had killed these two persons while exercising right of private defence.

26. In this context, it is worthy to mention here that the eyewitness account shows that while appellants Umanand and Chiranji Lal were working on their field, the goats grazed in the paddy field of the Basanti Lal – deceased began to cause damage whereupon Basanti Lal fled to remove goats. On this, the appellant Umanand pelted stones on the skull of Basanti Lal who fell down after receiving injuries. Another deceased also turned up running from his goth (cow-shed) then the appellant Umanand assaulted him on his chest by means of *Nisura.* Govind Ram fell down and when he got up and came to Basanti Lal then the appellant Chiranji Lal caught hold of him from the back side and Chiranji Lal and Umanand along with Govind Ram fell down from the Mendh of the field. Thereafter, the appellants Chiranji Lal and Umanand assaulted Basanti Lal and Govind Ram with stones.

27. The eyewitness account further shows that the appellant Chiranji Lal struck the head of Govind Ram deceased by means of stones and Chiranji Lal dragged Basanti Lal where Govind Ram was lying. Thereafter appellant Chiranji Lal put his feet on the neck of Basanti Lal and struck his head with stones due to which both Basanti Lal and Govind Ram died at the spot.

28. Considering the manner of the incident in which it is alleged to have been taken place, it cannot be said in any manner that during the course of the incident, the accused/appellants had any occasion to exercise the right of private defence of their persons. Therefore, the arguments advanced by the learned counsel for the appellant in this regard is devoid of any force.

29. Learned counsel for the appellants has further argued that the presence of the eyewitnesses at the spot appears to be doubtful. He has submitted that the eyewitnesses Maheshwari Devi (P.W.4), Satish Chandra (P.W.5) and Prem Ballabh (P.W.6) are the closed relatives of the deceased and in case and if they had seen the actual occurrence then

certainly they would have intervened in the matter in order to save the lives of the deceased persons. Therefore, no intervention by these witnesses during the course of the occurrence in order to save the lives of the deceased a creates doubt bout their presence at the spot.

30. We again do not find force in this argument. It is true that Maheshwari Devi (P.W.4) is the wife of the younger brother of the deceased and the accused. Likewise Satish Chandra (P.W.5) is the brother of the deceased and the accused and Prem Ballabh (P.W.6) is the son of one of the deceased Basanti Lal, but the manner in which the incident had taken place clearly shows that these witnesses could not have imagined that the accused/appellants will in fact cause the death of Basanti Lal and Govind Ram. It is a dispute between step brothers, therefore, none of the family members who was present at the spot could have imagined that the quarrel will end in the death of two persons namely, Basanti Lal and Govind Ram. It is true that there might be a struggle between the accused persons and the deceased on the question of grazing the goats who caused damages to the field of the deceased but the manner in which the incident had taken place clearly shows that it were the accused/appellants who caused the death of the deceased Basanti Lal and Govind Ram, and none else.

31. Perusal of the eyewitness account shows that Maheshwari Devi (P.W.4) has deposed about the occurrence in great detail. She is the wife of Jagdish Prasad who is the brother of the deceased as well as the accused/appellant. She has deposed that when Basanti Lal reached at the spot in order to remove away goats then accused/appellants Umanand caught hold of him and struck him on his head by stones and when Govind Ram reached to save Basanti Lal then again accused/appellant Umanand struck him on his head by means of *Nisura*. She has also deposed that she raised alarm and shouted *"MERE JETHON KO BACHAO"*. She also saw Basanti Lal and Govind Ram lying in the field of accused/appellant Umanand. She has further deposed that accused/appellant Chiranji Lal was wearing shirt and payajama which were

stained with blood. In her cross-examination she has deposed that Patwari had interrogated her and she told that assault was also made by *Fal of Hal (Naisura)*

32. Satish Chandra (P.W5) is the step brother of the accused/appellant Umanand and he has supported Maheshwari Devi (P.W.4) about the assault made by the accused Umanand by means of pieces of stones as well as assault made by Umanand at Govind Ram deceased by means of *Nisura.*

33. Again Prem Ballabh (P.W.6) is the son of the deceased Basanti Lal and he is also an eyewitness of the occurrence. He has categorically deposed that "*Mera pita ji ne bakrion ko bhagana chaha to muljim Umanand ne mere pita ko pathar fenk kar mara jo mere pita ki kanpatti par laga. Mere pita niche gir gaye. Mere chacha Govind Ram mere pita ji ko bachane ke leye aye jaise hi unhone mere pita par pair rakha muljim Umanand ne Nisura se unki chhati par var kiya. Nisura Ex-1 vahi hai. Mere chacha Govind Ram khet me gir gaye. Govind Ram apni chhati pakre uthe aur kinare-kinare mere pita ke pass aa rahe the to muljim Umanand Va Chiranji Lal ne Patharon se fenk kar mara.*"

34. This witness has further deposed that his mother and his aunt Maheshwari Devi were also present at the spot. Therefore, there is corroboration in the statement of all the eyewitnesses produced by the prosecution with regard to the manner of the incident and we do not find any reason to disbelieve the testimony of these witnesses.

35. It is true that these witnesses are closely related to the deceased but at the same time, it cannot be ignored that these witnesses are equally closed related to the accused/appellant. Therefore, these witnesses had no reason to falsely implicate the accused/appellants, in this case leaving aside the real culprit.

36. It is further to mention here that the ocular version finds full and complete corroboration with the medical version. Dr. Vijay Kumar Saxena (P.W.3) has conducted the autopsy on the body of the deceased Basanti Lal and Govind Ram. The doctor opined that the aforesaid ante mortem injuries could have been caused by means of pelting of heavy stones. Therefore, we are of the view that the ocular version cannot be discarded in any manner.

37. Our attention has also been invited towards the statement of accused/appellant Chirnaji Lal recorded under Section 313 Cr.P.C. in order to show that Chiranji Lal was not present at the place of the occurrence when the same took place. It is worthy to mention here that the accused/appellant did not produce any witness to corroborate him in this regard. The burden of proof pertaining to alibi rested on him which he failed to discharge. Therefore, the statement of the accused/appellant Chiranji Lal with regard to his alibi does not appear to be sufficient.

38. After the close scrutiny of the entire evidence on record and in view of the facts and the circumstances of the case, we are of the opinion that the prosecution has succeeded in bringing home the guilt of the accused/appellants Umanand and Chiranji Lal for committing the offence punishable under section 302 I.P.C. beyond reasonable doubt.

39. We do not find any infirmity in the impugned judgment and order passed by the court below convicting the appellants for having committed the offence under Section 302 I.P.C. and sentencing thereon for life imprisonment.

40. The appeals thus fail and are accordingly dismissed.

41. The record of the court below be returned back immediately so that the accused/appellants be taken into custody to serve out the sentence imposed against them.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

December 14, 2004
ASWAL